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CITY

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SUBJECT

The Legal Authority and Accountability of the CIA

PRESIDENT JIMMY CARTER: We also need clear and quick passage of a new charter to define the legal authority and accountability of our intelligence agencies. We will guaranty that abuses do not recur. But we must tighten our controls on sensitive intelligence information, and we need to remove unwarranted restraints on America's ability to collect intelligence.

ANNOUNCER: In his recent State of the Union address, President Carter called for greater operating freedom for the CIA and other U.S. intelligence agencies. The Administration wants to step up their use, especially in the area of covert activities, as a tool of American foreign policy.

This edition of Communique examines the controversy surrounding the changes planned for the intelligence community. Our host is Morton Kondracke, executive editor of The New Republic magazine.

MORTON KONDRACKE: In the history of the world, it's probably never happened that a country could reconcile its needs for secret intelligence operations with the ideals of democracy. Few have ever tried. Some would say that the two goals are inherently antithetical. Democracy implies openness, accountability, popular control, and respect for law. Spying involves secrecy, conspiracy, deniability, and often the breaking of laws.

Most countries resolve the dilemma by spying and not worrying about the implications. For much of our history, the United States has avoided the dilemma by avoiding intelligence operations. We did no peacetime spying until after World War II, when the Central Intelligence Agency was founded.

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From 1947 till the 1970s, the agency operated principally in the shadows, virtually unchecked by Congress or the public. In a flood of disclosures during the last decade, Americans learned about extensive abuses committed by the CIA in their name: attempted assassinations of foreign leaders, surveillance of domestic dissenters, drug experiments on unsuspecting victims, efforts to destabilize democratically elected foreign governments.

The disclosures led Congress to investigate the CIA in public, to expose its misdeeds, and to attempt to institute congressional control. CIA officials said the exposure caused demoralization in the agency and a decline in its ability to perform its mission.

In 1976 Jimmy Carter campaigned for President partly on a platform of correcting CIA abuses. In the first years of his presidency, he seems to have tried to carry out the promise by keeping the agency out of covert operations abroad. However, the multiple crises in the Middle East have changed the Administration's attitude toward intelligence.

Now the issue arises again: Is it possible to have a strong, active intelligence service and democratic controls as well? The issue comes to a head in the current debate in Congress over a proposed public charter for the CIA.

On the surface, there seems general agreement between the CIA and Congress that a charter is desirable. CIA Director Stansfield Turner endorsed the concept during an interview on *Communique* late last year.

ADMIRAL STANSFIELD TURNER: I want a charter very much. I think a charter is important for our country. On the one hand, it will make clear to the American public what the intelligence agencies are all about. Secondly, it's of great importance to us, because it lays down for us the rules within which we must operate. And that gives us a foundation upon which to do the job the country's asked us to do.

KONDRACK: CIA Director Stansfield Turner.

However, the agency has very definite ideas about what it would like a charter to accomplish. Deputy CIA Director Frank Carlucci spelled out the agency's principal concerns during a recent appearance on PBS's *MacNeil/Lehrer Report*.

FRANK CARLUCCI: The CIA remains the finest intelligence organization in the world. We do face certain problems, which if they are not solved will impede our effectiveness. The most important of these is the erosion of our ability to protect our sources and methods. The essential question is, how much more

effective could we be?

The activities which impinge on our ability to protect our sources and methods are the perception created by the Freedom of Information Act that we cannot keep a secret. We've suggested a solution to that. The activities of certain misguided individuals who make a career of trying to reveal the names of CIA personnel and agents. And the requirement that we must report special activities, covert-action activities, to eight committees of the Congress, some 200 members of Congress. And that's almost a contradiction in terms.

KONDRACKE: As Frank Carlucci stated, a major CIA objective is revision of a 1974 law, the Hughes-Ryan Act. That act places no restrictions on CIA intelligence-gathering activities, but requires the agency to notify up to eight congressional committees about covert operations abroad.

These so-called dirty tricks can range from financial support to a friendly newspaper, to bribing local officials, all the way to giving guns to rebels, or actually staging a pro-American coup.

The CIA wants to cut back the Hughes-Ryan reporting requirement to just one committee in each House of Congress. It also wants greater freedom in interpreting what activities it needs to report and when it needs to report them.

For an explanation of the value of these covert operations, NPR reporter Alan Burlow went to former CIA Director William Colby.

WILLIAM COLBY: There are certain situations in which it can be important to our national security -- you used the right word -- that we be able to give some secret help to some friends of ours in other countries around the world. And I think this is a good thing to be able to do. It will be controlled, under this constitutional structure that we've set up, and it will be accountable. So I think it's a good thing.

ALAN BURLow: Do you think we'd be in a worse position, in terms of having an effective foreign policy, if covert operations were abolished?

COLBY: Yes, I do, because I really don't think that we should be forced to sit here idly and watch the situation in some country important to us, either because it's close to us or because it's important strategically, polarize between a brutal dictator on one side and a ruthless terrorist hostile to us on the other.

Now, in that situation the brutal terrorist may look

to us for help to his position. And the ruthless terrorist will indicate that if he wins, he'll make sure that the country is hostile to us. And I don't think we ought to be faced with that either-or dilemma. I think we ought to have the opportunity to reach out for some decent people, some responsible people in that country and strengthen them against both of those extremes. And in most situations, this can only really be done secretly.

And consequently, I think that you're going to need this kind of operation to run an effective, decent, proper foreign policy in the complicated world around us.

KONDRACKE: Former Director Colby and other members of the intelligence community think that it's impossible for the CIA to report to eight committees and still maintain the secrecy necessary to conduct successful covert operations.

This view is also widely held in Congress, but not universally. An important dissenting voice is that of Representative Les Aspin of Wisconsin, Chairman of the House Intelligence Committee. Aspin thinks the current system of congressional oversight is not undermining this country's ability to conduct covert activities.

REP. LES ASPIN: We are, in fact, doing a lot of covert operations, and they are going on and they have been going on for some time, and they're not being leaked. I've sat through whole days of briefings on covert operations. I've not read about them in the paper. But what I have read in the paper is how we're paralyzed because of the Hughes-Ryan reporting requirement.

KONDRACKE: One question on covert operations going on now. Has there been a pickup in the number of covert operations over the last, say, six months?

REP. ASPIN: Six months? Yes, I'd say there had been a dramatic increase in the last six months.

KONDRACKE: So there has been some change in the Carter Administration's attitude toward the uses of intelligence.

REP. ASPIN: Absolutely no doubt about that. I think that the Carter Administration came into office basically believing that covert operations should be done extremely rarely, and has now changed that attitude a lot.

There obviously were people in the Administration who were advocating the use of co -- more use of covert operations all along. And they seem to be the ones that are calling the shots at this time.

But there's no doubt in my mind that there is a fundamental change about the use of covert operations. It's gone on fairly recently, and I guess within the last six months is as good a time.

KONDRACKE: Was there an event that tipped the scales?

REP. ASPIN: I don't think so, although I guess it was a combination of a frustration over a lot of things that were going on which did lead credence to the view of those who have always advocated covert operations that it's a necessary part of American foreign policy which is an intermediate step between diplomatic protests and involved in diplomatic discussions and the use of military force. The United States needs to have some way to influence events, but between those two options.

KONDRACKE: Every intelligence, former intelligence director seems to say that it's impossible for the CIA to operate the way it should, reporting to eight committees. And they all advocate perhaps two committees.

You don't agree with that, do you?

REP. ASPIN: Ultimately, it's probably not so bad. But this crazy notion that reporting to eight committees is paralyzing the CIA is just -- it's just nonsense.

In the first place, not all eight committees really take this thing very seriously. Only three of them do. And if you go through and you ask the CIA and you probe and ask the committee staffs of all of these eight committees how many people really are getting this briefings on these covert operations, what's going on, it turns out that 27 congresssman and 19 senators, plus nine staff people in the House and eight staff people in the Senate, which is not a large number of people to be briefed on covert operations.

Now, if you want to cut it down to the committees, the two intelligence committees, you'd be cutting it down; but that would still be 15 people in the House and 15 people in the Senate. So it doesn't cut it down a lot. But I would prefer that there would be more people rather than less. And the claim that there's like 200 congressmen hearing about covert operations is just not true.

The real problem with oversight is, of course, is that there's no political mileage in oversight of covert operations. Because they are secret and because the whole thing is done always in closed hearings, there's no way for congressmen to get any credit for doing that work. His constituents don't know he's doing it. His colleagues don't know he's doing it. There's nothing that helps you get reelected or helps you get along in

Congress.

KONDRACKE: Congressman Aspin's counterpart in the Senate, Democrat Birch Bayh of Indiana, thinks that CIA reporting should be limited to two committees. I interviewed Senator Bayh, along with Daniel Sutherland, diplomatic correspondent of The Christian Science Monitor.

SENATOR BIRCH BAYH: We need to repeal the Hughes-Ryan provision which requires that the intelligence agencies report to eight committees of Congress. That's ridiculous. We are talking about very sacred, secure secrets. And the success of many of these missions depend upon keeping those missions secret. And I think that we should limit the reporting requirement to the House and the Senate Select Committee on Intelligence, that recognizes the necessity of maintaining security.

When the Executive Branch undertakes one of these covert-action operations and when it blows up, the country pays for it. The Congress is called upon to bail us out.

DANIEL SUTHERLAND: I wonder how much of a danger there is that when you get down to two committees doing the oversight job, of the committees being co-opted, being brought so much into the intelligence apparatus that they begin to become part of it.

SENATOR BAYH: Well, I think that's a concern, a legitimate concern. The nature of the committee in the Senate -- and I think also in the House -- is different than the nature of other committees. It's a rotating membership, where membership changes. A third of the committee changes every two years. But the reason that was set up that way is so that people who have a working knowledge of the defense part of our country, the defense part of our government, people who have a working knowledge of how this all ties in with appropriations, that those people are included on the Intelligence Committee. And the membership is rotated so the chances of being co-opted, I think, are very small.

KONDRACKE: Senator Bayh is concerned, however, about what covert operations the CIA is willing to report and what the law should require it to report.

SENATOR BAYH: The agencies have been good at communicating with the Congress during the last year or two, operating under executive order, operating under Senate and House resolutions. They have done a good job of keeping us informed prior to the initiation of most all covert activities.

They are concerned about having to inform the Congress where you have a very sensitive subject area of undertaking where the life of those involved might be jeopardized because

of security leaks. They appear to be more than willing to continue to inform us about any long-range major undertaking, although they don't want to put any of this in the law. They want to continue to operate under executive order.

As I've pointed out, executive orders can be changed when you change the executive. The dedication of various members of Congress can change when you change those members of Congress. And it seems to me, if we believe that we need good intelligence-gathering systems, agencies, if we believe that in this country, contrary to others, those agencies and the personnel of those agencies operate under a rule of law, then we ought to put that in the law.

I mean we're in an election year right now. We don't know what the election's going to be. We do know what the former President and the former Secretary of State and the former Attorney General thought about using intelligence operations for political purposes. Now we've gotten that behind us, and I don't want to relive that, don't want to be overly critical of that. I just don't want to have to face that kind of circumstance again.

KONDRACKE: That was Senator Birch Bayh of Indiana.

We asked Congressman Aspin about how the CIA reporting system operates now and how it ought to report.

REP. ASPIN: The way it has worked, in general, is that as soon as the President makes the decision that the covert operation is okay -- in other words, as soon as he approves it -- two things happen. One is that the word goes out to the committees that the President has made a decision, and they request a meeting with the committees to brief them on the situation. But also that the covert operation goes into effect right away.

So, if Congress, for example, is in recess, we either get briefed on it after we get back, in which case the operation has been going for two weeks; or the word goes out to all the committee members to come on back and get the briefing and interrupt whatever else you're doing to come back and hear what's going on.

KONDRACKE: Stansfield Turner told the Senate Intelligence Committee the other day that they would not be completely informed and informed in advance of everything that was going on.

REP. ASPIN: Yes.

KONDRACKE: And you would want a charter to include a requirement that you be informed in advance and fully, I take it.

REP. ASPIN: Yes. In advance of the operation commencing. I don't think you want to be informed in advance of decisions that are pending. I mean there's a lot of thoughts that are given before the President makes his decision.

KONDRACKE: In other words, if there were a Bay of Pigs in the works, you would find out only when the troops were about to land.

REP. ASPIN: The sequence I described to you is the general sequence. I would not say that they followed that sequence in every case. If the operation is a very quick operation that would take a matter of 24 hours or less, there's nothing to prevent them from notifying Congress when the operation is completely over.

If Congress, the committees of Congress, hearing about the covert operation, think it is extremely dangerous or foolish or have some objection to it, the ways of protesting are all informal, and it ranges across the whole gamut. I guess the most serious would be, if we really were very serious about it, would be to get a delegation of congressmen together to go over and talk to the President about it. Below that, you might write a letter to somebody, or maybe write a letter to Brzezinski or to Vance. I mean there's lots of different ways of protesting, depending upon how strongly you feel about it.

KONDRACKE: Another major item of contention is whether the CIA should be forced to comply with the Freedom of Information Act. That act allows citizens, and even foreigners, to obtain information from U.S. Government files. The CIA contends that potential sources of information and help are discouraged from cooperating with the agency out of fear of exposure.

Deputy CIA Director Frank Carlucci pointed out that the law requires a response to every freedom-of-information request, even if it comes from a Communist embassy.

CARLUCCI: Now, if it's classified information, we can say, "No. We're not going to give it out." But we have to respond. And perhaps most importantly, we have to search our files. And that is contrary to good security practice in an intelligence organization.

Let me emphasize that we are not seeking total exemption from the Freedom of Information Act. We believe that our finished product ought to be subject to Freedom-of-Information-Act requests. We believe that we ought to be able to -- we ought to continue to respond to requests from people who want to know, "What is in my file?"

All we are seeking to protect, both from search and revelation in the public domain, are our sensitive operational files, those files that protect our sources and methods.

KONDRACK: Deputy CIA Director Frank Carlucci.

For an opposing view, we talked to Morton Halperin, Director of the Center for National Security Studies in Washington.

MORTON HALPERIN: As far as the Freedom of Information Act is concerned, the CIA has been pressing essentially for an exclusion of its counterintelligence and intelligence-gathering files from the Freedom of Information Act for some time. And again, they're going to use this opportunity to try to get that change in the legislation.

The Administration has never come up with a bill. There's been a lot of talk about proposed changes, but they have not produced a bill.

They have not made their case. There is no public case, and, as far as I can tell, no private case, indicating that the Freedom of Information Act has caused harm. The simple fact is that the CIA can withhold anything which could reasonably be expected to cause damage or which would jeopardize an intelligence source or method.

Now, it's true that they have to persuade a judge of that. But it is also true that they have never failed to persuade a judge. Not a single sentence has been ordered released by the CIA by a federal court where the CIA said that it was properly classified or would release intelligence sources and methods. Every single sentence that has come out in public from the CIA has been released voluntarily by the CIA.

To be sure, in some cases, in the middle of litigation, where they felt they could not justify the withholding. But all they have to do is meet a very simple standard: The release of the information will jeopardize an intelligence source or an intelligence method, or could reasonably be expected to cause identifiable damage. And to explain how an act which gives them that authority can jeopardize national security is something the CIA has not yet been able to do, and I don't think will be able to do.

KONDRACK: That was Morton Halperin.

Another issue about which there has been much discussion is whether to punish former CIA employees, journalists, and others who reveal national secrets or the names of U.S. intelligence operatives. Former CIA Director Colby explained to NPR's

Alan Burlow what the intelligence community's attitude on this question is. This position has won widespread support lately in Congress.

COLBY: The profession of journalism has a very simple rule. They protect their sources. I think our nation needs a very simple rule. We need to protect our sources, and we need to protect their identities and their names from being exposed either by people who go into the agency and then go out and decide that they will spill everything they learned -- a government officer who reveals crop statistics before the market opens goes to jail, under the legislation. Well, I think a government officer who reveals the names of a secret source of our intelligence in a foreign country, I think he should go to jail.

BURLOW: You advocated penalties for disclosure of classified information by government officials. Senator Moynihan has this proposal which would be more far-reaching, in that it would apply to persons who disclose names of agents, informants or sources from unclassified information.

What's your thinking on that?

COLBY: Well, there are two things. With respect to anybody who went into intelligence, who had authorized access to the classified information, then he should be punished if he reveals it, period.

Now, if, however, somebody on the outside develops a cottage industry, as we have some people doing, of trying to identify and trying to expose the names of our agents and officers and sources around the world, then I think that there should be some limitation on that.

We don't allow outsiders to go and raise rebellion in our armed forces. There's a statute that says if anybody tries to raise insubordination within our armed forces, he will go to jail. Now, that's necessary to protect the armed forces against that kind of an outside attack.

If Congress decides we have a secret intelligence agency, it needs to give it the appropriate defense so that it can exist. Now, that particular punishment says -- will not apply to every journalist who reveals a source, because it requires a very specific intent to injure the intelligence services of our government; not that you're just writing a story about some abuse, of something else. That's a different thing. And you have to prove that specific intent. And with that specific intent, I think it's clearly constitutional.

KONDRACK: Former CIA Director William Colby.

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While there's agreement now on the issue of protecting the names of agents, enactment of a charter continues to be delayed by contention between the Administration and Congress, particularly over reporting of covert operations. Some members of Congress wonder whether the Carter Administration, which formerly wanted to control the CIA, has now yielded to agency demands for more secrecy and greater leeway in its operations. This question arose at a recent hearing of the Senate Intelligence Committee in this colloquy between Senator Daniel Patrick Moynihan of New York and Deputy CIA Director Carlucci.

SENATOR MOYNIHAN: The negotiations on this matter have taken three years. And there was one rather critical point, for me, in the negotiation, which I was not present, and therefore do not feel at all hesitant to blab about. And that is, within the Administration, the various general counsels had got together and put together their charter, and they had produced a tax code, in the manner that lawyers will do. It was code somewhat defensive of the current authorities and the activities of the intelligence agencies. And the Vice President looked at this, presiding at this meeting, looked it down sternly, in his way, and said, "You fellows don't seem to understand who won the last election." The clear purpose of the statement was to say, "A member of the Church Committee is now Vice President of the United States. And all those things that we stood for are now here in the Administration, and we expect some response."

Well, that was a year and a half ago. And then two weeks ago appears the head of the CIA, who says, "No, we're not going to give Congress any information. We don't think" -- or not much information, or not enough information, as Congress expected.

And, see, the problem is now suddenly we don't seem to understand who won the last election. And does the Administration see how much its views have shifted as a certain kind of inexorable reality has forced itself in upon them, and that we are at a -- in a curious way, we could be either at a stalemate or at a point where a very creative solution could be got.

One gets the impression that the Administration is now dominated more by the thought that they need good intelligence than that they -- the intelligence machinery mustn't be abused, and so forth. And there is, after all, an elemental fact, which is any democracy, one our size, needs an intelligence system, and it has to operate in a constitutional situation, which its citizens have rights that have to be observed. And you have to find the way to accommodate to meet both necessities. And one of the clear ways is an oversight mechanism of the Congress.

CARLUCCI: There was a thorough airing of views and a good give-and-take as we attempted to strike the very balance

that you talk about; and that the charter that we are considering does enable us to produce good intelligence, and at the same time gives the necessary guarantees regarding civil liberties.

KONDRACKE: Deputy CIA Director Frank Carlucci.

And so the question remains: Is it possible to have effective intelligence and democratic controls as well? It ought to be possible. In 1980, however, it may be just barely possible. In the current atmosphere of international crisis, Congress is very likely to be politically bulldozed into giving the CIA just what it wants. It is entirely possible that Congress will simply pass a few laws giving the CIA more secrecy and cutting back on current congressional oversight. It's likely that despite widespread agreement in principle, differences over specifics will keep Congress from passing a full charter to insure that the CIA observes civil liberties and democratic restraints.

If that happens, there will be no legal fetters on the CIA. Assassinations, coups, drug experiments, and domestic spying, all the abuses of the bad old days, will be possible again, and prevented only by the self-restraint of the Executive Branch.

But the whole American system is based on governance by laws and not by individuals. This principle needs to apply, above all, to the nation's intelligence community.